

PUNJAB STATE INFORMATION COMMISSION

Red Cross Building, Near Rose Garden,
Sector 16, Chandigarh.

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Sh. Sat Pall Sharma 9463292433

3623, Street No. 1,

Durga Puri, Haibowal kalan,

District Ludhiana

....Appellant

Vs

Public Information Officer

o/o Distt & Session Judge,

District Ludhiana

First Appellate Authority

Registered

o/o Distt. And Session Judge,

District Ludhiana

....Respondents

Appeal Case No. 3517 of 2021

ORDER

This order may be read with reference to the previous order dated 15.12.2021 vide which the order in this case was reserved to be pronounced.

2. The appellant has sought the following information vide his RTI application dated 18.5.2021:-

SUBJECT: Supply of the information regarding the award of minor punishments/penalties for the charges/imputations against the employees of the District and Lower Courts Ludhiana during the last 5 years.

RESPECTED SIR,

DETAILS OF REQUIRED DOCUMENTS IS GIVEN BELOW

1. List and documents for awarded minor punishments/penalties against the charges/imputations to the employees worked/working in the session courts and Lower Courts of Ludhiana during the last 5 years, that is effect from 01/01/2016 to till the date of supply of information along with the attested copies of the decisive inquiry report, office notings, orders passed thereon and etcetera by the Punishing Authority

3. On receipt of the RTI application the Public Information Officer replied vide letter No. 7149

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dated 7.6.2021 and the relevant portion of the same is reproduced below:-

With reference to your subject cited application, the information sought relates to personal one, the disclosure of which has no relation with any public activity or interest and rather disclosure of desired information would cause unwarranted invasion to privacy of the individual, by not justifying disclosure of the said information in larger public interest as per Section 8(1)(j) of the RTI Act, 2005 which is exempted [Per: Girish Ramchandra Deshpande Vs Central Information Commissioner (MANU/SC/0816/2012), decided on 03.10.2012]. Also, the sought information being voluminous one, is barred u/S 7(9) of RTI Act, 2005 as per which the information which would disproportionately divert the resources of the public authority, is not required to be provided. Under the RTI Act, the information can only be supplied which is available and existing but there is no separate record being maintained in this office by showing the imposition of minor punishments/penalties, as alleged. It is further made clear that as held by Hon'ble Supreme Court of India in Central Board of Secondary Education & Another Versus Aditya Bandopadhyay & Others [(2011) 8 SCC 497], this provision does not ask a public authority to create an information or record which is not readily available with such public authority. PIO of any public authority is not expected to create and generate a fresh information only

because it has been sought by an appellant/applicant, only such information can be supplied that is available and existing and when the information sought is not part of record of Public authority, the RTI Act does not cast an obligation upon the public authority, to collect or collate such non available information and then furnish it to the applicant/appellant.

4. Also the appellant filed the first appeal before the First Appellate Authority on 15.6.2021 and the First Appellate Authority passed the order dated 14.7.2021 and sent to the appellant vide

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No. 8689 dated 22.7.2021 and the relevant portion of the same is reproduced below:-

Subject cited appeal has been received in this office vide receipt No.8745 dated 15.06.2021 against the reply bearing No.7149/G dated 07.06.2021 given by the PIO of this office.

Appellant was called for personal hearing for 09.07.2021 but he did not appear before the undersigned, when called on telephonically, he refused to come and requested for another date. Accordingly, the appellant was again called for today i.e. 14.07.2021 but he failed to appear before the undersigned nor any application for exemption has received in this office, which shows that he has nothing to say in the matter.

I have gone through the grounds of appeal, reply of the PIO and the application of the appellant seeking information under Right to Information Act 2005. Appellant in his RTI application dated 18.05.2021 sought list and document(s) pertaining to minor punishments/penalties against the charges/imputations to the employee of Ludhiana Sessions Division w.e.f. 01.01.2016 till the date of reply alongwith attested copies of the decisive inquiry report, office notings, orders passed thereon and etcetra by the Punishing Authority.

PIO of this office has sent his reply vide letter No. 7149/G dated 07.06.2021 to the appellant by declining the request of the appellant and having dissatisfied with the reply, he filed the present appeal.

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Reading of Section 8 (1) (j) of the RTI, Act provides that personal information is exempted from disclosure which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual. Also, reading of Section 8 (1) (c) of the RTI, Act provides that there shall be no obligation to give any citizen- the information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. No reason has been assigned in the application as to why the appellant requires aforesaid information to satisfy that the larger public interest justifies disclosure of such information.

Further, as per *Girish Ramchandra Deshpande v. Central Information Commissioner* [MANU/SC/0816/2012] decided on 03.10.2012 by the Hon'ble Supreme Court, the information desired by the appellant relates to matter which are primarily between the employee and employer and normally these aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest and disclosure of the same would cause unwarranted invasion of privacy of that individual.

It has further been informed by the PIO to the appellant that there is no separate list/record being maintained in this office by showing the imposition of minor punishments/penalties as alleged. Under the RTI Act, the information can only be supplied which is available and existing and as held by Hon'ble Supreme Court of India in *Central*

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Board of Secondary Education & Another Versus Aditya Bandopadhyay & Others [(2011) 8 SCC 497], this provision does not ask a public authority to create an information or record which is not readily available with such public authority. PIO of any public authority is not expected to create and generate a fresh information only because it has been sought by an appellant/applicant; the RTI Act does not cast an obligation upon the public authority to collect or collate such non available information and then furnish it to the applicant/appellant. Furthermore, in case, such information for desired period is to be created, it being voluminous one, is barred w/S 7(9) of RTI Act, 2005 as per which the information which would disproportionately divert the resources of the public authority and is not required to be provided.

Therefore, the desired information was not required to be provided and hence, the same was rightly declined. Accordingly, the reply given by the PIO of this office bears no infirmity and present appeal being devoid of any merit is hereby dismissed.

Appellant be intimated accordingly.

5. Feeling aggrieved the appellant filed the 2nd appeal before the Commission on 4.8.2021 and the notice of hearing was issued to the parties for 23.9.2021.
6. During the hearing on 23.9.2021, the following order was passed:-
 - "2. The representative of the respondents states that the appellant has sought the voluminous information and the reply has already been sent to the appellant and also First Appellate Authority has passed the order in this case, which is taken on record. However, the appellant states that the respondent may be directed to supply the complete information in this case.

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3. It was brought to the notice of the parties regarding the decision of the Hon'ble Supreme Court of India in the matter of Girish R. Deshpande vs CIC and others (SLP (c) No. 27734/2012)

"The performance of an employee/Officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the impression 'personal information', the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which could cause unwarranted invasion of the privacy of that individual."

The Supreme Court further held that such information could be disclosed only if it would serve a larger public interest.

4. However, the appellant contended that this judgement is not applicable in this case.

5. Therefore, the appellant is directed to file the submissions that how the judgement is not applicable in this case. He is also directed to file the public interest involved in seeking the information before the next date of hearing to the respondent-Public Information Officer with a copy to the Commission to take the matter to its logical end." And the case was adjourned for 26.10.2021 but on the request of the appellant to adjourn the case, the case was fixed for hearing on 9.11.2021.

6. During the hearing the appellant sent the written submissions which were transmitted to the respondent-Public Information Officer with the directions to file the

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rejoinder, if any. Also the relevant portion of the submissions made by the appellant are reproduced below:-

1. That the appellant has been directed to file the public interest involved in the sought information vide order dated 23/09/2021.

2. That the appellant is submitting his reply hereunder:-

a. I am pained to note the contents of reply enclosed with endorsement no 4737/G dated 20/09/2021 from the district & session judge Ludhiana. As it appears that the responded does not have any respect for the RTI Act 2005. They have also resorted to cover up there plea by a story which is not true. The fact is that the calls were made for appearance on 16/07/2021 and not to deliver the orders dated 14/07/2021. A copy of the what app messages received on 16/07/2021 is also attached herewith which Cleary state that I was to be heard by the first appellant authority on 16/17/2021 which confirms that the orders of the first appellant authority were issued pre dated on 14/07/2021 as already pointed out by me in the second appeal made to your goodself.

b. The noting attached with the reply dated 20/09/2021 also confirm that no proper notice was issued with sufficient period and without mentioning the time for hearing in the notices as is required under the RTI Act 2005.

c. The RTI Act 2005 has been enacted to check the corruption in the working of the government department and bring transparency and accountability.

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d. The present application was filed to bring out transparency to protect the public interest of litigants and general public as there is information of instances of removal of pages or destruction/losing of file of the courts to benefit the disputing parties in the office of District & session Judge Ludhiana and letting off the employees with minor punishment.

e. No police reports are made for the loss of record as required under the rules of maintenance of record in the government office in such cases in the working of the offices under the District & Session Judge Ludhiana.

3. The information's sought pertains to disciplinary proceedings initiated against the loss or misplacing of judicial files or the documents/papers attached with the same, which ultimately causes an irreparable loss to the litigants/concerned persons and it also pollutes the mechanism of judicial administrative system with regard to the custody and safety of records and if the erring officials does not get a proper punishment then they would again commit the same negligent act and corrupt practices with impunity and the general public always remain its victim. Vice versa if an inadvertent act attract a stern action then it would also disseminates the negative message of partiality amongst the employees with regard to the conduct of inquiry proceedings, which eventually debilitates their integrity, responsiveness, loyalty and commitment towards work and the person is still the public in that case also, who are dealing with the staff. Hence, these facts attract the transparency and accountability and every citizen has a right to know, whether the fair and effective mechanism has been adopted to conduct the

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disciplinary proceedings otherwise he would always wait become the victim of unfair system. Therefore, when there is a lack of transparency in the mechanism, the possibility of partiality or arbitrariness cannot be ruled out.

4. The referred judgment titled Girish R Deshpande v/s CIC and others by the respondents has an exception for disclosure of the same, which justifies the larger public interest. In addition the another referred judgment titled Central Board of Secondary Education and another Aditya Bandopadhyay and others also enunciated that "it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interest essential for the fulfillment and preservation of democratic ideals". Moreover, it has also been asserted that "the right to information is a cherished right. Information and Right to Information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability".

5. That as per judgment titled Vijay Dheer v/s State information commission, Punjab and others, D/d 04/03/2013 by Hon'ble High Court of Punjab and Haryana, "the object and reasons of the act recite that the provisions of the act are to ensure maximum disclosure and minimum exemptions consistent with the constitutional provisions and to provide for an effective mechanism for access to an information and disclosure by authorities. Act has been enacted in order to promote transparency and accountability in the working of every public authority".

6. That as per judgment titled Board of Directors/C/M, Administrative committee of Zila Sahk v/s State information commission, Lucknow Thru Exec. Officer and others, D/d 27/10/2017 by Hon'ble High Court of Allahabad, " Right to Information and Right to confidentiality or privacy - Balancing of two such conflicting rights - Held, in such cases which of the two conflicting rights has to be given primacy depends upon larger public interest.

And the case was further adjourned for 15.12.2021 on the said date the

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respondent reiterated the reply already filed by Public Information Officer and the order passed by the First Appellate Authority. However, the appellant requested that the direction may be issued to the respondent-Public Information Officer to supply the information.

7. It is also appropriate to mention that the appellant has levelled general and baseless allegations against the entire staff working in the District and Sessions Judge, Ludhiana without any documentary evidence as per the submissions made by him on 9.11.2021. Therefore, no directions are being given to the respondent authority in this regard. As far as the submissions made by the appellant that he was not given a reasonable time to be heard by the First Appellate Authority is concerned, the First Appellate Authority is to examine this issue at his own level so as to prevent such re-occurrence, if any, in future. Therefore, this order is being sent to the First Appellate Authority through registered post.

8. In the case of **Canara Bank Rep. by its Deputy Gen. Manager v. C.S. Shyam & Anr.** Civil Appeal No. 22 of 2009 in which the Hon'ble Supreme Court of India has decided that information between employer & employee is personal information and as such exempted under Section 8(1)(j) of the RTI Act, 2005, if no public interest is established by the appellant/complainant.

9. It is pertinent to mention here the case of **Girish Ramchandra Deshpande's vs. CIC and others (SLP (C) no. 27734/2012)** in which the petitioner sought information of the employee and Hon'ble Supreme Court of India has held as under:-

"12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are

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qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act.

The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual.

Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right."

10. After going through the judicial pronouncements, hearing the submissions made by the parties viz a viz RTI application of the appellant, and going through the case file, the Commission accepts the plea taken by the respondent as the same would cause unwarranted invasion to privacy of the individual and is not justified disclosure of the said information in the larger public interest as per Section 8(1)(j) of the RTI Act, 2005. Moreover, the appellant could not establish the larger public interest since he has made general allegations against all the staff working in the District & Sessions Judge Office, District Ludhiana. Therefore, the Commission is of the view that no further action is required to be taken in this case. Hence, the case is disposed of and closed.

sd

Dated:31.12.2021

(Suresh Arora)
Chief Information Commissioner,
Punjab.